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In the Supreme Court of the United States

OCTOBER TERM, 1974

PEARL BARRETT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the court of appeals (App. 16-27) is reported at 504 F.2d 629.

JURISDICTION

The judgment of the court of appeals was entered on October 18, 1974. The petition for a writ of certiorari was filed on November 18, 1974, and was granted on February 18, 1975. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 18 U.S.C. 922(h), which makes it unlawful for a convicted felon, among others, to receive a firearm "which has been shipped or transported" in interstate commerce, covers the intrastate purchase by a convicted felon of a firearm which previously had been transported to the dealer in interstate commerce.

STATUTES INVOLVED

18 U.S.C. 922(h) provides:

> (h) It shall be unlawful for any person—
>
> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> (2) who is a fugitive from justice;
>
> (3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or
>
> (4) who has been adjudicated as a mental defective or who has been committed to any mental institution;
>
> to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The other pertinent statutes are set forth in the Appendix to this brief, *infra*, pp. 1a-15a.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Kentucky, petitioner was convicted of receiving, after having been convicted of a felony, a firearm that had been transported in interstate commerce, in violation of 18 U.S.C. 922(h) (App. 5). He was sentenced to three years' imprisonment, subject to the immediate parole eligibility provisions of 18 U.S.C. 4208(a)(2) (App. 9-10). The court of appeals affirmed, one judge dissenting (App. 16-27; 504 F.2d 629).

On April 1, 1972, petitioner, a resident of Booneville, Kentucky, who previously had been convicted of the crime of housebreaking and sentenced to two years' imprisonment for that offense (Tr. 78-79), purchased a .32 caliber Smith & Wesson revolver from a federally-licensed firearm dealer in Booneville (Tr. 37, 40-41, 77). The revolver had been manufactured in Massachusetts and received by the Kentucky dealer from a North Carolina distributor about a month before petitioner purchased it. The sale to petitioner was the first retail sale of the firearm (Tr. 39-40, 42, 52). About 45 minutes after he purchased the firearm, petitioner was arrested for driving while intoxicated. The police thereupon found the fully-loaded firearm on the floorboard of the car on the driver's side (Tr. 19-21, 78).

At trial, no evidence was adduced to show that petitioner had in any way participated in the inter-

state shipment of the firearm. The trial court rejected petitioner's contention that such proof was an essential element of the crime under 18 U.S.C. 922 (h), and instructed the jury that the interstate commerce requirement would be satisfied if the firearm had at some time in the past traveled in interstate commerce (Tr. 99).

The court of appeals affirmed, holding that petitioner's receipt of the revolver violated the plain language of Section 922(h) and that it was not necessary for the government to prove that petitioner received the firearm from a common carrier in interstate commerce (App. 17-19). Judge McCree dissented, on the ground that this Court in *Tot* v. *United States*, 319 U.S. 463, had authoritatively construed Section 2(f) of the Federal Firearms Act, the predecessor of Section 922(h), to require that the direct interstate receipt of a firearm be shown (App. 24-27).

SUMMARY OF ARGUMENT

I

A. The language of Section 922(h) of the Gun Control Act of 1968, making it unlawful for a convicted felon "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce," unambiguously covers the intrastate purchase of a firearm previously shipped or transported interstate. The language pertains solely

to what was done to the firearm or ammunition prior to receipt—that it was shipped or transported interstate—and does not require any participation by the convicted felon in that shipment or transport. Congress was fully aware of the normal meaning given to such language. It used the same present perfect tense to describe two of the categories of persons who are prohibited in the same statute from acquiring a firearm or ammunition because of past events. Moreover, had it wished to confine the provision to the direct interstate receipt of a firearm or ammunition it would have used the language it employed elsewhere in the Act to describe the receipt of a firearm "which is moving as, which is a part of, or which constitutes" interstate commerce, or to make it illegal "to * * * receive in interstate * * * commerce" a firearm.

Since the prohibition in Section 922(h) is clear, petitioner received fair warning of the sanctions the law placed on his conduct, and there is no ambiguity necessitating resolution in favor of lenity.

B. The structure of the Gun Control Act confirms the plain meaning of Section 922(h), since virtually every section of the Act is designed to keep firearms and ammunition out of the hands of certain categories of potentially irresponsible people, including convicted felons, whose possession of them would create a serious danger of public injury.

So construed, Section 922(h) complements Section 922(d), which prohibits licensees from knowingly selling or otherwise disposing of firearms in an inter-

state or intrastate transaction to the same categories of potentially irresponsible people. Were Section 922 (h) limited to direct interstate receipts, those persons could obtain a firearm whenever a licensee inadvertently sold it to them in an intrastate transaction. Petitioner's reading of Section 922(h) would also relegate it to a near redundancy with Section 922(g), which prohibits the same categories of persons from shipping firearms interstate or causing them to be shipped interstate.

Section 922(h), construed to cover intrastate receipts of firearms previously shipped or transported interstate, is also congruent with the Act's strict licensing and record-keeping requirements, and the prohibition upon the giving of false material information to licensees. Congress did not except from the direct prohibitions of the Act that which it sought to prevent indirectly in the remainder of the Act through a complex set of prophylactic measures governing intrastate sales and dispositions of firearms and ammunition.

C. The legislative history of the Gun Control Act shows a broad purpose to keep firearms out of the hands of certain categories of potentially irresponsible people. There is no indication in either the committee reports or the congressional debates that the scope of the statute was to be in any way restricted.

II

This Court should not follow its statements in *Tot* v. *United States* and *United States* v. *Bass* that Sec-

tion 2(f) of the Federal Firearms Act of 1938 and Section 922(h) of the Gun Control Act do not apply to the intrastate receipt of a firearm that previously had moved in interstate commerce, since those statements do not rest upon any analysis of the language, statutory design, or legislative history of the provision. Congress cannot be deemed to have approved or adopted the interpretation of Section 922(h) in *Tot* when, a quarter of a century later, it used the identical language in enacting a new gun control law which reflected an intention broadly to bar the receipt of firearms and ammunition by certain categories of potentially irresponsible persons.

ARGUMENT

I.

SECTION 922(h) OF THE GUN CONTROL ACT PROHIBITS THE INTRASTATE PURCHASE BY A CONVICTED FELON OF A FIREARM WHICH PREVIOUSLY HAD BEEN TRANSPORTED TO THE DEALER IN INTERSTATE COMMERCE

A. The language of Section 922(h) unambiguously covers the intrastate purchase of a firearm previously shipped or transported interstate.

1. Section 922(h) of the Gun Control Act makes it unlawful for a convicted felon "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."[1] As the

[1] The prohibition applies to four categories of persons: (1) one who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a

court of appeals concluded, "there is no ambiguity in Section 922(h) of the Act. It means exactly what it says" (App. 19). It bars receipt of any firearm that "has been" shipped or transported in interstate commerce without regard to whether the receipt itself was part of the interstate movement.

The meaning is clear: a convicted felon is prohibited from receiving any firearm or ammunition which at some past time has been shipped or transported in interstate commerce. There are no qualifying words which would limit the prohibition to situations where the convicted felon was himself the consignor or consignee of the interstate shipment, or where in some other way he directly received the interstate shipment. The language pertains solely to what was done to the firearm or ammunition before the receipt (its shipment or transportation in interstate commerce) and makes no reference to any participation by the convicted felon in that shipment or transport.

Use of the "present perfect" tense, as in "*has been* shipped or transported" unambiguously denotes an "act or state completed at the time of speaking" (Webster's *New International Dictionary* (2d ed. unabridged, 1936). The statute covers receipt of a firearm which has already completed its interstate journey and has come to rest within the state at the time of its purchase. Congress was fully aware of the normal meaning of the present perfect tense, since it also used that tense to describe two of the categories of persons who are prohibited in the same statute from acquiring such a firearm or ammunition because of past events: a person who "*has been* convicted" of a crime punishable by imprisonment for a term exceeding one year (Section 922(h)(1)), and a person who "*has been* adjudicated as a mental defective" or "*has been* committed to any mental institution" (Section 922(h)(4)) (emphasis supplied).

By contrast, the prohibited act—"*to receive* any firearm or ammunition"—is stated in the present tense, showing that it relates to an act done after the firearm or ammunition has completed its interstate movement.

2. Had Congress wished to confine Section 922(h) to the direct interstate receipt of a firearm or ammunition, as petitioner maintains, Congress would have said so, as it did in other sections of the Gun Control Act. In Section 922(a)(3), for example, which prohibits any non-licensee from receiving any firearm he previously purchased or obtained outside his state of residence,[14] Congress barred a non-licensee from receiving any firearm "purchased or otherwise obtained *by such person* outside that State * * *"

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term exceeding one year—a category that would include convicted felons; (2) one who is a fugitive from justice; (3) one who is an unlawful user of or addicted to marijuana or any depressant or stimulant drug (as defined in Section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (defined in Section 4731(a) of the Internal Revenue Code of 1954); or (4) one who has been adjudicated as a mental defective or who has been committed to any mental institution.

[14] The Act requires manufacturers of and dealers in firearms and ammunition to be licensed by the Secretary of the Treasury. See p. 16, *infra*.

(emphasis supplied). By contrast, Section 922(h) contains no language even suggesting that its prohibition of receipt by a convicted felon (among others) applies only when the firearm or ammunition was transported or received in interstate commerce by such person.

Similarly, Section 922(j) prohibits the receipt of a stolen firearm "which is moving as, which is a part of, or which constitutes" interstate commerce. Had Congress intended to impose a similar limitation in Section 922(h), it could have used that language or another similar common phrase for limiting a statute to direct interstate receipt.[2] Alternatively, Congress could have used language such as that in Section 922(k), which makes it unlawful for any person knowingly "to * * * receive in interstate * * * commerce"[3] any firearm whose serial number has been removed or altered.

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[2] See, *e.g.*, 18 U.S.C. 659 ("[W]hoever * * * by fraud or deception obtains * * * any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight * * *"); 18 U.S.C. 2313 ("[w]hoever receives * * * any motor vehicle or aircraft, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen * * *"); 18 U.S.C. 2315 ("[w]hoever receives * * * any goods, wares, or merchandise * * * moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen * * *").

[3] Many other federal statutes—in contrast to Section 922(h)—also prohibit the doing of certain acts "in interstate or foreign commerce." See, *e.g.*, 18 U.S.C. 2421 (transporting a woman for the purpose of prostitution); 18 U.S.C. 1952 (traveling with intent to further or facilitate certain unlawful enterprises); 18 U.S.C. 1951 (committing robbery or extortion); 18 U.S.C. 1231 (transporting persons for the purpose of strikebreaking); 18 U.S.C. 1201 (kidnapping); 18 U.S.C. 1084 (gambling); 15 U.S.C. 77e (securities fraud).

Indeed, it is difficult to see how Congress could have expressed more clearly its intention to prohibit convicted felons (among others) from receiving any firearm or ammunition which some time previously had entered the state where they receive it. "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction." *United States* v. *Wiltberger*, 5 Wheat. 76, 95-96; *Yates* v. *United States*, 354 U.S. 298, 305; *Browder* v. *United States*, 312 U.S. 335, 338.

3. *United States* v. *Sullivan*, 332 U.S. 689, strongly supports our reading of Section 922(h). There respondent had been charged with violating Section 301(k) of the Federal Food, Drug and Cosmetic Act of 1938, which prohibits "the doing of any * * * act with respect to, a * * * drug * * * if such act is done *while such article is held for sale after shipment in interstate commerce* and results in such article being misbranded" (emphasis supplied). Respondent contended that the provision did not apply to him, since he had purchased the drugs in question six months after the interstate shipment had been completed by their delivery to another consignee (332 U.S. at 696). This Court held the prohibition covered respondent's conduct. "[T]he language used by Congress broadly and unqualifiedly prohibits misbranding articles held for sale after shipment in interstate

commerce, without regard to * * * how many intrastate sales had intervened, or who had received the articles at the end of the interstate shipment" (*ibid.*).

The same reasoning applies to the language in Section 922(h), which broadly and unqualifiedly prohibits petitioner, a convicted felon, from receiving a firearm which has been transported in interstate commerce, without regard to intervening intrastate sales or who had received the firearm at the end of the shipment. Indeed, the operative language of Section 922(h) was originally enacted as part of the Federal Firearms Act by the same Congress that enacted the Federal Food, Drug and Cosmetic Act, and with a similar purpose: to protect the public from negligent or irresponsible handling of an inherently dangerous product traveling in interstate commerce, up to and including the time when it is purchased or received in an intrastate transaction.[4]

4. Since the prohibition in Section 922(h) is unambiguous, petitioner received fair warning of the sanctions the law placed on his conduct. Petitioner was on notice that his purchase of a firearm which previously had been shipped or transported into the state was unlawful. Thus this is not an occasion for application of the maxim that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis* v. *United States*, 401 U.S. 808, 812; *United States* v. *Bass*, 404 U.S. 336, 347. Although penal laws are to be strictly construed, they

[4] See our discussion of the Legislative history of the Federal Firearms Act, *infra*, at 18-19.

"ought not to be construed so strictly as to defeat the obvious intention of the legislature." *American Fur Company* v. *United States*, 2 Pet. 348, 367; *United States* v. *Bass*, *supra*, 404 U.S. at 351; *Huddleston* v. *United States*, 415 U.S. 814, 831.

B. The structure of the Gun Control Act shows that Congress intended Section 922(h) to prohibit the persons there designated from receiving any firearms that have been transported in interstate commerce.

The structure of the Gun Control Act confirms that Congress meant what it said when in Section 922(h) it unequivocally prohibited convicted felons (among others) from receiving any firearm which has been shipped or transported in interstate commerce.

Virtually every section of the Act manifests a single goal: to keep firearms and ammunition out of the hands of certain categories of people whose possession of them would create a serious danger of public injury. Those potentially irresponsible individuals—persons under indictment, convicted felons, fugitives, those addicted to or unlawfully using narcotics, adjudicated mental defectives or those committed to a mental institution[5]—are comprehensively barred by the Act from acquiring firearms or am-

[5] Sections 922(d), (g) and (h). See n. 1, *supra*. Licensees are also prohibited from selling or delivering any firearm or ammunition to a person who the licensee has reasonable cause to believe is under 18 years of age (Section 922(b)(1). A person under 21 years of age cannot receive a license to deal in firearms (Section 923(d)(1)(A)).

munition by any means.[6] Construing Section 922(h) to cover intrastate receipts of firearms and ammunition that have moved interstate is in accord with and furthers this comprehensive regulatory scheme.

1. Section 922(d) prohibits licensees from knowingly selling or otherwise disposing of firearms, in an interstate or intrastate transaction, to the same categories of potentially irresponsible persons.[7] Our interpretation of Section 922(h) complements Section 922(d) by barring these potentially irresponsible persons from receiving any firearm or ammunition previously transported interstate, even if an unwitting or negligent licensee is otherwise willing to sell it to them. In the instant case, for example, the dealer who sold petitioner the fire-arm testified that at the time of the sale it had not occurred to him to ask petitioner if he was a convicted felon, since the dealer had known petitioner for five years during which time petitioner frequently purchased sporting goods at the dealer's store (Tr. 46, 47).

Under petitioner's construction of Section 922(h), however, such inadvertence would give those potentially irresponsible persons an unrestrained opportunity to obtain all the firearms and ammunition

[6] These same persons were comprehensively barred by Congress from acquiring explosive materials. See 18 U.S.C. 841-848.

[7] Non-licensees are prohibited from engaging in the business of transporting or shipping firearms or ammunition in interstate commerce. Section 922(a)(1), (2), and (3).

they desire.[8] Petitioner's reading of Section 922(h) also would create the anomaly that, although licensees are prohibited by Section 922(d) from knowingly selling firearms or ammunition in an interstate *or* intrastate transaction, the persons to whom the licensees cannot sell would be prohibited from receiving such goods only if the transaction were interstate. They could avoid liability altogether by the simple expedient of purchasing firearms or ammunition from their local dealer.

2. Our interpretation of Section 922(h) also comports with Section 922(g), which prohibits the same categories of potentially irresponsible persons from shipping firearms interstate or causing them to be shipped interstate.[9] Petitioner's reading of Section 922(h), however, would relegate it to a near redundancy with Section 922(g), since almost every inter-

[8] While convicted felons would be prohibited by 18 U.S.C. App. 1202(a) from receiving a firearm intrastate (see our discussion of Title VII of the Omnibus Crime Control and Safe Streets Act, *infra*, at 23-24), Section 1202(a) does not prohibit such persons from obtaining ammunition. Nor does it prohibit indictees, fugitives, or persons who are addicted to or unlawfully use narcotics from receiving a firearm or ammunition.

[9] Section 922(g) was derived from Section 2(e) of the Federal Firearms Act of 1938, which made it unlawful for certain persons to ship or transport or to "cause [a firearm or ammunition] to be shipped or transported" in interstate commerce. The latter clause became unnecessary with the enactment of 18 U.S.C. 2(b), making one who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States" punishable as a principal. See Reviser's Note to 18 U.S.C. 2.

state shipment is likely to have been solicited or otherwise caused by the direct recipient. Thus Section 922(h) would cover the identical acts covered by Section 922(g), except on the rare occasion where the interstate shipment so received had not been solicited by the recipient.

Petitioner's construction would create a further anomaly. If a prohibited person attempts to purchase from his local dealer a firearm that is not currently in the dealer's stock, causing the dealer to order it interstate, that person violates Section 922 (g), since he caused the interstate shipment to occur. Under petitioner's construction of Section 922(h), however, the person would escape liability altogether if the firearm had already completed its interstate travel and happened to be in the dealer's stock at the time of purchase.

3. The government's construction of Section 922 (h) is also congruent with other provisions of the Act which regulate intrastate sales. Under the Act, a manufacturer of or dealer in firearms or ammunition must be licensed by the Secretary of the Treasury (Sections 922(a)(1), 923(a)), even if his business is transacted entirely within his own state. No person barred from receiving firearms or ammunition may obtain a license (Section 923(d)(1)(B)). Licensees may not knowingly sell or otherwise dispose of firearms or ammunition to such persons, even if the sale or disposition is wholly intrastate (Section 922 (d)). See *Huddleston* v. *United States*, 415 U.S. 814, 833. The statute further provides that recipients must

physically be present on the licensee's premises at the time of purchase (unless certain strict requirements are met) (Section 922(c)), and it forbids recipients from knowingly giving licensees false information as to facts material to the lawfulness of the sale (Section 922(a)(6)). Both of these provisions also cover wholly intrastate transactions. See *Huddleston* v. *United States*, *supra*, 415 U.S. at 833.

Further provisions forbid disposition of firearms to anyone who is prohibited from possessing or purchasing a weapon by state or local law at the place of sale or delivery (Section 922(b)(2)). The Act also requires that a licensee note the names, ages and places of residence of all persons to whom firearms are sold or otherwise disposed (Section 922(b)(5)). Additionally, the licensee is required to maintain such records in the form required by the Secretary of the Treasury, filing such reports as the regulations prescribe (see 26 C.F.R. 178.124). The licensee's place of business is subject to inspection for the purpose of inspecting records and firearms sold on the premises. Cf. *United States* v. *Biswell*, 406 U.S. 311, 315-316.

Were Section 922(h) confined to the direct interstate receipt of firearms or ammunition, as petitioner urges, the Gun Control Act would cover every aspect of intrastate transactions in firearms or ammunition except the most crucial aspect: actual receipt. Congress did not except from the direct prohibitions of the Act that which it sought to prevent indirectly in the remainder of the Act through a complex set

of prophylactic measures governing intrastate sales and dispositions.

C. The legislative history of the Gun Control Act confirms our interpretation of Section 922(h).

1. The Gun Control Act (Pub. L. 90-618) was enacted in 1968 as an amended (and identical, but for a provision extending coverage to long guns) version of Title IV of the Omnibus Crime Control and Safe Streets Act (Pub. L. 90-351), enacted earlier that year. Both acts enlarged and extended the Federal Firearms Act of 1938 (c. 850, 52 Stat. 1250). While the operative phrase of Section 922(h) of the Gun Control Act, making it illegal to receive "any firearm or ammunition which has been shipped or transported in interstate or foreign commerce," remained identical to that in Section 2(f) of the Federal Firearms Act,[10] Section 922(h) expanded the categories of persons prohibited from such receipt.[11]

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[10] Section 2(f) provided:

> It shall be unlawful for any person who has been convicted of a crime of violence or is a fugitive from justice to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this Act.

The presumption of receipt from the fact of possession was held to violate due process in *Tot* v. *United States,* 319 U.S. 463, discussed *infra,* pp. 22-28.

The Gun Control Act also added many of the other prophylactic measures, governing intrastate as well as interstate transactions, to which we have already referred (*supra,* pp. 16-17).[12]

The Federal Firearms Act had a broad purpose: "to prevent the crook and gangster, racketeer and fugitive from justice from being able to *purchase or in any way come in contact* with firearms of any kind * * *" (S. Rep. No. 1189, 75th Cong., 1st Sess., p. 33 (1937); emphasis supplied). None of the committee reports or hearings on that legislation reflects any intention to confine Section 2(f) to direct interstate receipts of firearms.[13]

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[11] See n. 1, *supra,* p. 7. Section 922(h) also substituted persons "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" for the Section 2(f) category of persons "convicted of a crime of violence."

[12] The new features in the Gun Control Act included a ban on interstate shipments to or from non-licensees, and a provision making it unlawful for non-licensees to engage in manufacturing or dealing in firearms, whether or not such business involved interstate commerce. The Act also increased the fees for licenses, set minimum standards for licensees, gave the Secretary of the Treasury broad regulatory powers, and required that dealers obtain identification from would-be purchasers. See our discussion, *supra,* pp. 16-17. See generally Zimring, *Firearms and Federal Law: The Gun Control Act of 1968,* 4 J. Legal Studies 133 (1975).

[13] See S. Rep. No. 1189, 75th Cong., 1st Sess. (1937); also Hearings on S. 3 before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess. (1937); Hearings on S. Res. 74 before a Subcommittee of the Senate Committee on Commerce, 73d Cong., 2d Sess. (1934); Hearings on S. 885, S. 2258, S. 3680, before a Sub-

The history of the 1968 Gun Control Act indicated a similar concern with keeping firearms and ammunition out of the hands of certain categories of potentially irresponsible persons, including convicted felons. The principal purpose of the 1968 Act was also stated broadly: to curb crime by keeping "firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." S. Rep. No. 1501, 90th Cong., 2d Sess., p. 22 (1968). See also 114 Cong. Rec. 13219 (1968) (remarks by Senator Tydings); *Huddleston* v. *United States*, *supra*, 415 U.S. at 824.

Congress in 1968 was aware of the continuing hazard posed by firearms and ammunition in the hands of certain persons, regardless of how those persons obtained them. During 1967, extensive hearings had been held on various anti-crime bills, including proposed gun control legislation, during which frequent reference was made to the report of the President's Commission on Law Enforcement and the Administration of Justice, published in February 1967, as *The Challenge of Crime in a Free Society.*[14]

committee of the Senate Committee on Commerce, 73d Cong., 2d Sess. (1934).

[14] See Hearings on H.R. 5037, H.R. 5038, H.R. 5384, H.R. 5385 and H.R. 5386, before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., pp., 213, 242, 261 (1967) (testimony and statement of former Attorney General Ramsey Clark); pp. 487-488 (table submitted by Congressman Casey showing percentage of serious crimes committed with firearms); p. 495 (testimony of James V. Bennett, President, National Council for a Responsible Firearms

A chapter of the report dealt with more effective gun control legislation, noting that the existing Federal Firearms Act of 1938 had not been effective in preventing convicted felons from purchasing firearms locally after they had been transported from another state (*id.* at 240). The seriousness of the possession of firearms by such persons was underscored by statistics showing that in 1965, 5,600 murders, 34,700 aggragated assaults, and the vast majority of 68,400 armed robberies were committed by means of firearms, and that all but 10 of the 278 law enforcement officers murdered from 1960 through 1965 were killed with firearms (*id.* at 239).

The Gun Control Act sought, in the words of Congressman Celler, its House Manager, "to maximize the possibility of keeping firearms out of the hands of [potentially irresponsible] persons." 114 Cong. Rec. 21784 (1968). In light of this purpose, Con-

Policy). The Crime Commission's report was also considered by the Senate Judiciary Committee in connection with S. 917, the bill which was substituted for H.R. 5037 and was eventually enacted as the Omnibus Crime Control and Safe Streets Act of 1968. S. Rep. No. 1097, 90th Cong., 2d Sess. p. 31 (1968).

The committee report on S. 917 cited, in a discussion of Title IV of the bill (including the provision that was to become Section 922(h) of the Gun Control Act), further statistics on the use of firearms in the commission of serious crimes, indicating significant increases in 1966 and 1967 over the 1965 figures reflected in the Crime Commission's report. *Id.* at 76. Further statistics and reports on firearms were cited in the addiitonal views of Senator Tydings on Title IV, which accompanied the commiteee report. *Id.* at 190, 193-195, 203-204.

gress could not have intended that the broad and unambiguous language of Section 922(h)—prohibiting such persons from receiving "any firearm or ammunition which has been shipped or transported in interstate * * * commerce"—be confined to direct interstate receipts, as petitioner suggests.

Under petitioner's reading, Section 922(h) would not cover the most common transaction in firearms or ammunition: their purchase or receipt from a local dealer. It would be confined to the relatively unusual situation where the firearms or ammunition were shipped interstate directly to the prohibited recipient. But given the purpose of Congress in 1968 to strengthen the gun control law, it is improbable that the broad language of the provision was intended to be confined to such an unusual situation.

II.

THIS COURT SHOULD NOT FOLLOW ITS STATEMENTS IN *TOT* v. *UNITED STATES* AND *UNITED STATES* v. *BASS* THAT SECTION 2(f) OF THE FEDERAL FIREARMS ACT OF 1938 AND SECTION 922(h) OF THE GUN CONTROL ACT DO NOT APPLY TO THE INTRASTATE RECEIPT OF FIREARMS AND AMMUNITION THAT PREVIOUSLY HAVE MOVED IN INTERSTATE COMMERCE

In *Tot* v. *United States*, 319 U.S. 463, this Court held invalid, as violating due process, the presumption in Section 2(f) of the Federal Firearms Act of 1938 that the possession of a firearm or ammunition by a person convicted of a crime of violence would

justify the jury in inferring that the firearm or ammunition had been shipped in interstate commerce and had been received after the effective date of the Act. Prior to so ruling, however, it stated with respect to the language of the statute defining the crime—"receiv[ing] any firearm or ammunition which has been shipped in interstate or foreign commerce"—(319 U.S. at 466):

> Both courts below held that the offense created by the Act is confined to the receipt of firearms or ammunition as a part of interstate transportation and does not extend to the receipt, in an intrastate transaction, of such articles which, at some prior time, have been transported interstate. The Government agrees that this construction is correct.

The Court also twice referred in passing to the acquisition of firearms or ammunition in interstate commerce (pp. 469, 472).

When Congress enacted Title IV of the Omnibus Crime Control and Safe Streets Act (of which the gun control law, including Section 922(h), is a part), it also enacted Title VII of that Act. One provision of that title, 18 U.S.C. App. 1202(a), prohibits convicted felons (among others) from "receiv[ing], possess[ing], or transport[ing] *in commerce or affecting commerce* * * * any firearm" (emphasis supplied).

United States v. *Bass*, 404 U.S. 336, held that the words "in commerce or affecting commerce" in Title VII apply to "receiv[ing]" and "possess[ing]" and not just to "transport[ing]," as the government con-

tended; and accordingly that the government is required to prove a "nexus with interstate commerce * * * in individual cases" (p. 350). The Court then ruled, however, that to establish the offense under Section 1202(a) of " 'receiv[ing] * * * in commerce or affecting commerce' * * * the Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce" (*ibid.*; footnote omitted). In rejecting the government's contention that reading the statute as requiring an interstate nexus for the offense of receiving "would make Title VII redundant with Title IV" (p. 341), the Court stated (p. 342) that Title VII "punish[es] a broader class of behavior" than Title IV:

> Even under respondent's view, a Title VII offense is made out if the firearm was possessed or received "in commerce or affecting commerce"; however, Title IV apparently does not reach possessions or intrastate transactions at all, even those with an interstate commerce nexus, but is limited to the sending or receiving of firearms as part of an interstate transportation.[10] [pp. 342-343.]

In footnote 10 the Court stated (p. 343) that, in striking down the presumption of the predecessor statute in *Tot*, it "there noted":

> "[T]he Act is confined to the receipt of firearms or ammunition as a part of interstate transportation and does not extend to the receipt, in an intrastate transaction, of such articles which, at some prior time, have been transported interstate." *Id.*, at 466.[15] While the reach of Title IV itself is a question to be decided finally some other day, the Government has presented here no learning or other evidence indicating that the 1968 Act changed the prior approach to the "receipt" offense. See, *e.g.*, S. Rep. No. 1097, 90th Cong., 2d Sess., 115 (1968).

The statements in *Tot* and *Bass* that Section 2(f) of the 1938 Act and Section 922(h) of the Gun Control Act do not apply to the intrastate receipt of a firearm or ammunition that previously has moved interstate, do not rest upon any analysis of the language, the legislative history or the basic statutory design. Although the government's brief in *Tot* argued for several pages that Section 2(f) applied only to receipts that were part of interstate transactions (Brief for the United States, No. 569, October Term, 1942, pp. 11-17), the Court apparently treated the proposition as accepted for the purposes of the case, and without any substantial discussion of the point went on to consider at length the validity of the presumption.

Although when Congress considered the Gun Control Act more than twenty years later, it presumably was aware of the *Tot* holding that the presumption was invalid, since it did not include the presumption in the new statute, there is no indication that it was aware of the statement in *Tot* that the words "receive any firearm or ammunition which has been

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[15] This statement is broader than the language in *Tot*, where the quoted language was preceded by the words "[b]oth courts below held that the offense created by * * *" (319 U.S. at 466).

shipped or transported in interstate or foreign commerce" do not mean what they say and are limited to receipts that are a part of such commerce. We have found no reference to *Tot* in any of the reports or debates on the Gun Control Act (see S. Rep. Nos. 1501 and 1097, 90th Cong., 2d Sess. (1968); 114 Cong. Rec. 12303-12304 (1968)), and there is nothing in that legislative history showing any intent to accept the limited interpretation given that phrase in *Tot*.

Thus, Congress cannot be deemed to have approved or adopted the interpretation of those words in *Tot* when, a quarter of a century later, it used the identical language in enacting a new gun control law. "To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities. Congress may not have had its attention directed to an undesirable decision * * *." *Helvering* v. *Hallock*, 309 U.S. 106, 119-120 (footnote omitted); cf. *United States* v. *Raynor*, 302 U.S. 540, 551-552; *Girouard* v. *United States*, 328 U.S. 61, 69-70. To the contrary, as we have shown in point I, the entire design of the statute reflects an intention broadly to bar the receipt of firearms and ammunition by the categories of potentially irresponsible persons whom Congress prohibited from acquiring those articles.

The Court's statements in *Bass* about the apparently limited reach of Section 922(h) suffer from the same infirmity. They were apparently based upon the Court's earlier indication in *Tot* that the predecessor statute was thus restricted. The briefs in *Bass* did not discuss the scope of Section 922(h). The Court's interpretation of that section was designed to show that there were significant differences in the reach of that section and the section involved in *Bass*. They were made without any discussion of the factors normally considered in interpreting legislation: the language, legislative history and design and purpose of the statute. Indeed, the single authority cited in addition to *Tot* on this issue—the Senate Conference Report on the Gun Control Act (404 U.S. at 343, n. 10)—supports rather than undercuts our interpretation of Section 922(h). See, *supra*, p. 20.

The Court's interpretation of Titles IV and VII in *Bass* leads to this anomaly: Title VII, which covers "receiv[ing] * * * in commerce or affecting commerce * * * any firearm," requires only a showing that the firearm received has previously traveled in interstate commerce" (404 U.S. at 350); but Title IV, which covers "receiv[ing]" any firearm * * * which has been shipped or transported in interstate * * * commerce," is limited to "receiving of firearms as part of an interstate transportation" (p. 343). There is no reason to believe that Congress intended to produce this topsy-turvy result when it enacted these related provisions as different titles of the same Act.

In these circumstances, we urge that this Court should not consider itself bound by the statements in *Tot* and *Bass* regarding the limited reach of the pro-

vision. Instead, it should reexamine the question afresh on the basis of the arguments made in point I. Those arguments convincingly show that the language in Section 922(h) covers the intrastate receipt of a firearm or ammunition that previously had moved in interstate commerce. "This Court has many times reconsidered statutory constructions that have been passively abided by Congress" (*Zuber* v. *Allen*, 396 U.S. 168, 185, n. 21). It should follow the same course here and reject its previous views regarding the limited reach of the statutory prohibition upon a convicted felon receiving "any firearm * * * which has been shipped or transported in interstate or foreign commerce."

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be affirmed.

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APPENDIX

18 U.S.C. 922 provides:

Unlawful acts

(a) It shall be unlawful—

(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufactur-

er, or licensed dealer for the sole purpose of repair or customizing;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his

State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or recepit of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm

made to carry out a bequest of a firearm to, or any acquisition by interstate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm or ammunition to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any

person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his riflle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

(5) any firearm or ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

> "Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement

officer of the locality to which the firearm will be delivered are ————————

————————————————————

Signature ———————— Date ——."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt request evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the shipment.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731 (a) of the Internal Revenue Code of 1954); or

(4) has been adjudicated as a mental defective or has been committed to any mental institution.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation

or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter.

(f) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(g) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201

(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

18 U.S.C. 925(c) provides, in pertinent part:

> A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. * * *

18 U.S.C. App. 1201 provides:

> The Congress hereby finds and declares that the receipt, possession, or transporation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—
>
> (1) a burden on commerce or threat affecting the free flow of commerce,
>
> (2) a threat to the safety of the President of the United States and Vice President of the United States,
>
> (3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

18 U.S.C. App. 1202(a) provides:

Any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

18 U.S.C. App. 1203 provides, in pertinent part:

This title shall not apply to—

* * * *

(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly

been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

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